

CRIMINAL APPEAL NO. 842 OF 1986
with
Criminal Appeal No.990 of 1986.

Date of decision: 28.2.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

and

The Honourable Mr. Justice H. R. Shelat

Criminal Appeal No. 842 of 1986
Mr. K.P. Raval, A.P.P. for appellant-State.
Mr. R.S. Gajjar, advocate for respondent No.2.

Criminal Appeal No.990 of 1986
Mr. B.B. Naik, advocate for appellant.
Mr. R.S.Gajjar & Mr. M.H. Shaikh, advocates for
respondent No.2.
Mr. K.P. Raval, A.P.P.for respondent No.3.

1. Whether Reporters of Local Papers may be allowed
to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy
of judgment?
4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder?
5. Whether it is to be circulated to the Civil
Judge?

Coram: R.R.Jain & H.R. Shelat, JJ.

February 28, 1996.

Oral judgment (Per Jain, J.)

Two accused, namely, Mahammadsumar Hajikasm alias Sumar Bottle and Isa Nasib Jat, were charged for commission of offence under Section 120 B (1) of IPC read with Sections 7 and 13 of Dangerous Drugs Act 1930 and Section 135 of the Customs Act, 1962, for possession of Dangerous Drug like heroin in contravention of various notifications and for entering Indian territory. The learned Additional Sessions Judge, vide judgment and order dated 17.4.1986, acquitted both the accused for the charges levelled. Aggrieved by the order of acquittal, the State of Gujarat has preferred Criminal Appeal No.842 of 1986 under Section 378 of Criminal Procedure Code whereas since the investigation was done by the Customs Department, the Customs Authority also preferred appeal against acquittal being Criminal Appeal No.990 of 1986. Since both appeals are arising from the same judgment are disposed of by this common judgment. However, we say that since two different authorities have filed appeals claiming identical relief, the subsequent appeal, i.e., Criminal Appeal No.990 of 1986, becomes infructuous and does not require any consideration as is nothing but duplication of proceedings. Even otherwise also, the subsequent appeal shall meet with the same fate as that of the previous one, that is, Criminal Appeal No.842 of 1986 and, therefore, does not require separate consideration.

When the matter is taken up for hearing, Mr. B.B. Naik, learned advocate appearing on behalf of the Customs Department, makes a statement under instruction from the Department that original accused No.1/respondent No.1 Mahammadsumar Hajikasm alias Sumar Bottle has died in Bhuj jail in the year 1993 while serving sentence in connection with some other matter. The learned advocate Mr. R.S.Gajjar had also made similar statement on an earlier occasion. Since both the parties are at agreement with regard to death of respondent No.1/original accused No.1, we hold that death of accused No.1 during the pendency of appeal abates the appeal and proceedings against him. Accordingly, the appeals against respondent No.1/original accused No.1 stand disposed of as abated.

Now the question remains about appreciation of prosecution evidence with regard to complicity of respondent No.2/original accused No.2. We have gone through the entire record to find that the respondent No.2 is charged only for harbouring deceased respondent No.1/original accused No.1. Except bare allegation by

the investigating agency, we do not find any concrete and cogent material on record which can establish his involvement in harbouring the deceased respondent No.1/original accused No.1. In absence of any iota of evidence to prove his involvement in commission of offence as alleged, that is, harbouring, we are of the view that the learned trial Judge was right in acquitting him on merits. Apart from this fact, our attention is drawn to the observation made by the learned trial Judge in para 6 of his judgment. Even before the trial Court also the learned P.P. Mr. R.K. Shah, had fairly conceded that prosecution has not been able to prove its case beyond reasonable doubt against the original accused No.2/respondent No.2. During the course of hearing, Mr. B.B. Naik, learned advocate representing Customs Department, has also failed to draw our attention to any of the evidence connecting respondent No.2/original accused No.2 for involvement in commission of offence as charged. In this view of fact, the judgment and order of trial Court does not require any interference by this Court. We are in agreement with the reasonings and the line of appreciation of evidence which weighed the trial Judge for acquittal as a result of which we do not find any merit in the appeals. Thus, the appeals being devoid of merits deserve to be dismissed.

In the result, since respondent No.1/original accused No.1 has expired, both the appeals stand abated against him and both the appeals against respondent No.2/original accused No.2 stand dismissed.